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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/728,188      | 12/01/2000  | Zefu Chen            | 6122/62344          | 4504             |

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EXAMINER

LUGO, CARLOS

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 04/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

|                             |                                       |                                 |
|-----------------------------|---------------------------------------|---------------------------------|
| <b>Offic Action Summary</b> | Application No.                       | Applicant(s)                    |
|                             | 09/728,188<br>Examiner<br>Carlos Lugo | CHEN ET AL.<br>Art Unit<br>3677 |
|                             |                                       |                                 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 04 March 2003.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-10 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-10 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 01 December 2000 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### **Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)      4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.      6) Other: \_\_\_\_\_.

## DETAILED ACTION

1. This Office Action is in response to applicant's amendment filed on March 3, 2003.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. **Claim 1 and 3-10 are rejected** under 35 U.S.C. 103(a) as being unpatentable over the admitted Prior Art disclosed from Page 2 Line 15 to Page 3 Line16 and illustrated on Figure 1 in view of US Pat No 4,527,711 to Harrell.

Regarding claims 1,3,4,6,8 and 9, the prior art discloses a cover latch comprising a pushing bar (2), a handle attached to one end of the bar and a support member attached to the other end of the bar. The latch further comprises a plurality of latches (6) attached to the support member and a plurality of springs (4) attached to the support member.

However, the Prior Art fails to disclose a pull rod having a circular cross section and a handle attached to the center of the pull rod. The Prior Art discloses a push bar having a handle.

Harrell teaches a cover latch for a container comprising a pull a rod (11) that has a circular cross section, having a handle (12) attached to the center of the pull rod.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a pull rod, as taught by Harrell, into a cover latch as

described by the Prior Art, because it will be consider as a design consideration because it will have the same purpose of disengage the latches from the catches in order to open or close the cover.

As to claim 5, the Prior art illustrates that the support member is formed in a U-shape.

As to claim 7, the Prior Art illustrates that the plurality of springs is leaf springs.

As to claim 10, the Prior Art illustrates that the support member and the plurality of latches and springs are formed as a single unit.

4. **Claim 2 is rejected** under 35 U.S.C. 103(a) as being unpatentable over the admitted Prior Art disclosed from Page 2 Line 15 to Page 3 Line16 and illustrated on Figure 1 in view of US Pat No 4,527,711 to Harrell and further in view of US Pat No 4,129,325 to Hern et al (Hern).

The Prior Art, as modified by Harrell, discloses the invention substantially as claimed. However, the combination fails to disclose the use of an O-ring arranged around the rod to seal an opening in the dispenser.

Hern teaches that a latch mechanism comprising an O-ring (element 86) arranged around the pull rod (element 70) to seal an opening (on the wall 24) through which the rod is pulled using the handle is known in the art.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a similar seal element like the one illustrated by Hern, into the combination, in order to prevent humidity or any other element to enter the dispenser.

***Response to Arguments***

5. Applicant's arguments filed on March 3, 2003 have been fully considered but they are not persuasive.

Regarding applicant's arguments to differences between the Prior Art and the instant invention (Page 3 Line 4 to Page 4 Line 13), applicant is reminded that the mere existence of differences between the prior art and an invention does not establish the invention's nonobviousness. The gap between the prior art and respondent's system is simply not so great as to render the system non-obvious to one reasonably skilled in the art.

As to applicant's arguments to motivation must come from the present invention, applicant is reminded that a conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill without any specific hint or suggestion in a particular reference. *In re Bozek*, 416 F. 2d 1385, 1390 163USPQ545, 549 CCPA 1969.

As to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning (Page 5 Line 5), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

As to applicant's arguments regarding the rejection under section 103 in view of the Prior Art, as modified by Harrell (Page 7 Line 24 to Page 9 Line 25), this argument is not persuasive.

Claim 1 only claims a cover latch comprising a pull rod; a handle attached to an end of the pull rod; a support member attached to the other end of the pull rod; a plurality of latches attached to the support member and a plurality of springs attached to the support member. The Prior Art meets this structure.

The fact that in order to disengage the cover latch from the dispenser, a user pulls rather than pushes the structure, is mere a reversal of parts because either by pushing, as disclosed by the Prior Art, or by pulling, as taught by Harrell, it will have the same purpose of disengage the latches from the catches in order to open or close the cover.

The applicant is only reversing the orientation of the plurality of spring and latches of the Prior Art in order to obtain a pulling movement. That is considered as to be within the purview of one ordinary skill in the art.

Furthermore, the applicant claims that the orientation of the plurality of latches is away from the pull rod and the orientation of the plurality of springs is toward the pull rod in order to obtain "the pushing movement" desire by the applicant.

US Pat No 6,131,773 to Wade et al (Wade), cited as prior art in the last Office Action, illustrates this orientation of the plurality of springs and latched but to make a "pulling movement". Therefore, is just a reversal of parts of either pull or push a rod or bar in order to open the cover of the container.

As to applicant's arguments that Harrell does not disclose a plurality of springs and latches (Page 8 Line 20 to Page 9 Line 10), Harrell does not have to disclose the plurality of latches and springs, the Prior Art already disclose these features. Harrell is used to show that is known in the art to have a pulling rod in order to open a cover latch of a dispenser.

As to applicant's arguments regarding the rejection under section 103 in view of the Prior Art, as modified by Harrell and Hern (Page 10 Line 23), this argument is not persuasive. The Prior Art, as modified by Harrell, discloses the invention as claimed.

Hern is used merely to teach that is known in the art to have a latch mechanism comprising an O-ring arranged around a pull rod in order to seal an opening through which the rod is pulled using a handle. This O-ring or sealing element will prevent humidity or any other element to enter the dispenser.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing

date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo. The examiner phone number is (703)-305-9747. The fax number for correspondence before a final action is (703)-872-9326 and the fax number for correspondence after final action is (703)-872-9327. The email direction of the examiner is carlos.lugo@uspto.gov. The examiner can normally be reached on Monday to Friday from 9:30am to 6:30pm (EST). If the examiner is not available, please leave a message, including the application number and the examiner will answer the message as soon as possible.

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March 25, 2003

  
J. J. SWANN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600